

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

KEVIN GAMBLE,

Plaintiff,

v.

**9:06-CV-979
(FJS/RFT)**

**MS. A. MONETTE, School Teacher; MR.
WOLCZYK, Attorney Commissioner Hearing
Officer; JOHN W. BURGE, Superintendent; and
MR. DONALD SELSKY,**

Defendants.

APPEARANCES

KEVIN GAMBLE

00-A-6625

Clinton Correctional Facility

P.O. Box 2000

Dannemora, New York 12929

Plaintiff *pro se*

SCULLIN, Senior Judge

MEMORANDUM-DECISION AND ORDER

I. BACKGROUND

The Clerk of the Court has sent Plaintiff Kevin Gamble's civil rights complaint and his application to proceed *in forma pauperis* to the Court for its review.¹

In his complaint, Plaintiff alleges that in June 2005 Defendant Monette wrote a false misbehavior report against him and failed to cooperate with a subsequent hearing. In addition,

¹ Plaintiff has filed six other complaints in this District. *See Gamble v. Loran*, 9:05-CV-1088; *Gamble v. Cox*, 9:05-CV-1093; *Gamble v. Monette*, 9:05-CV-1095; *Gamble v. Isaacs*, 9:05-CV-1097; *Gamble v. Monette*, 9:06-CV-136; and *Gamble v. Allen*, 9:06-CV-1182.

Plaintiff alleges that Defendant Wolczyk denied him a fair and impartial hearing.

II. DISCUSSION

A. Plaintiff's previous actions

Plaintiff has filed two previous complaints against Defendant Monette and one previous complaint against Defendant Wolczyk. *See Gamble v. Monette*, 9:05-CV-1095; *Gamble v. Monette*, 9:06-CV-136. These two cases, in addition to the present one, all relate to the **same June 2005 incident** that resulted in the alleged false misbehavior report and the subsequent hearings.

Judge Hurd dismissed *Gamble v. Monette*, 9:05-CV-1095, without prejudice on December 14, 2005, because Plaintiff failed to comply with his September 9, 2005 Order. *Gamble v. Monette*, 9:06-CV-136 is pending before Judge Kahn.

B. Inadvertent opening and subsequent dismissal of this action without prejudice

On July 14, 2006, in *Gamble v. Monette*, 9:06-CV-136, Magistrate Judge DiBianco ordered Plaintiff to submit USM-285 forms, together with three copies of Plaintiff's complaint, to the Court by August 16, 2006. It appears that Plaintiff intended to submit his present complaint in compliance with Magistrate Judge DiBianco's Order and did not intend that the Court use this pleading to open a new case. Plaintiff's letter, which this Court received on September 12, 2006, clearly indicates Plaintiff's intentions. *See* Dkt. No. 4. Accordingly, in light of the fact that it appears that Plaintiff did not intend to commence a new matter, this Court will dismiss this

action without prejudice.²

C. Transfer of Plaintiff's complaint

Plaintiff's claims against Defendants Monette and Wolczyk are currently pending in *Gamble v. Monette*, 9:06-CV-136. In that proceeding, the Clerk of the Court recently issued summonses for Defendants Monette and Wolczyk. However, since it does not appear that Plaintiff has served these Defendants or, if he has served them, that they have served a pleading in response to his complaint, Rule 15 of the Federal Rules of Civil Procedure allows Plaintiff to file an amended complaint as of right. *See* Fed. R. Civ. P. 15(a). Accordingly, because it appears that Plaintiff intended to file his present complaint as an amended complaint in 9:06-CV-136, the Court directs the Clerk of the Court to docket Plaintiff's present complaint as an amended complaint in 9:06-CV-136.

D. Plaintiff's *in forma pauperis* application

Since the Court is dismissing this action, it denies Plaintiff's *in forma pauperis* application as moot.

III. CONCLUSION

After reviewing Plaintiff's submissions and the applicable law and for the reasons stated herein, the Court hereby

² The Court reminds Plaintiff that he must clearly label all documents that he submits to the Court **with the case number that the Court has assigned to that action.**

ORDERS that this action is **DISMISSED WITHOUT PREJUDICE**; and the Court further

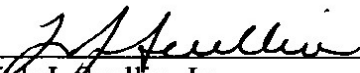
ORDERS that Plaintiff's *in forma pauperis* application is **DENIED AS MOOT**; and the Court further

ORDERS that the Clerk of the Court shall file Plaintiff's present complaint as an amended complaint in 9:06-CV-136; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on Plaintiff.

IT IS SO ORDERED.

Dated: November 9, 2006
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge